

# \* NATURAL JUSTICE \*

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## Introduction

Natural justice or procedural fairness is a legal philosophy used in some jurisdictions in the determination of just, or fair, processes in legal proceedings. Natural justice operates on the principles that man is basically good and therefore a person of good intent should not be harmed, and one should treat others as one would like to be treated. 'Natural Justice' imposes a code of fair procedure, including the right to be given a fair hearing and the opportunity to present one's case, the right to have a decision made by an unbiased or disinterested decision-maker and the right to have that decision based on logically probative evidence. Natural justice in essence could just be referred to as 'Procedural Fairness', with a purpose of ensuring that decision-making is fair and reasonable.

The principles of Natural Justice are a part of the legal and judicial procedures and it comprises of two concepts, namely

- (a) Audi alteram partem, or the right to fair hearing
- (b) Nemo iudex in sua causa, or the no man can be a judge in his own cause

Administrative law is that body of law which applies for hearings before quasi-judicial or quasi-judicial organizations or administrative tribunals and which supplements the rules of natural justice with their own detailed rules of procedure. It is synonymous with natural justice.

As a body of law, administrative law deals with the decision-making of administrative units of government (e.g., tribunals, boards or commissions) that are part of a national regulatory scheme in such areas as police law, international trade, manufacturing, the environment, taxation, broadcasting, immigration and transport. Administrative law expanded greatly during the twentieth century, as legislative bodies worldwide created more government agencies to regulate the increasingly complex social, economic and political spheres of human interaction.

## History of the growth of Natural Justice and Administrative Law

**Natural Justice**-According to Roman law certain basic legal principles were required by nature, or so obvious that they should be applied universally without needing to be enacted into law by a legislator. This

was a seedbed for the growth of natural justice. The rules or principles of natural justice are now regularly applied by the courts in both common law and Roman law jurisdictions.

**Administrative Law**-The main reasons for the growth and development of administrative laws has been the expansion of administrative apparatus, functions and powers of the government. This has been the effect of demise of laissez faire era, which was the prevailing dogma in the 9th century and the rise of the era of social welfare state in the middle of the 20th century.

Before 1963, in Britain, the judicial attitude was very restrictive in regard to the applicability of natural justice to administrative proceedings. This was highlighted in the case of cancelling the license of a taxi driver on the grounds of his misconduct.<sup>1</sup>

There was a need to make the administrative functioning follow some procedural process and to make it completely transform the judicial thinking and widening the area where the principles of natural justice were applicable.<sup>2</sup> Thus the application of natural justice in Administrative functions was started. The advantage that this new approach had was that now without characterizing the functions as quasi-judicial, procedural fairness could be applied on a large no. of decision making bodies. The Courts now maintained that irrespective of whether a body was performing quasi-judicial functions or administrative functions it ought to act with fairness.

### **Principles of natural law and natural justice**

People have drawn their criteria of justice from many sources; i.e. from the nature of things, from the nature of man and from the nature of God. Natural law is the outcome of man's quest from an absolute standard of Justice.

Natural law, according to scholars, is that objective, eternal and immutable hierarchy of moral values which are a source of obligation with regard to man because they have been so ordained by the creator of nature. The law confirms to the essence of human nature.<sup>3</sup> As Max Weber said:

“Natural law is the sum total of all those norms which are valid independently of, and superior to, any positive law and which owe their dignity not to arbitrary enactment but, on the contrary, provide the very legitimation for binding force of positive law”<sup>4</sup>

Thus, Natural law cannot be proved by employing the methods of scientific realism. By its definition it reflects the true dignity of individual man and is the very foundation of human justice.

<sup>1</sup> R v. Metropolitan Police Commissioner (1953) 1 WLR 1150.

<sup>2</sup> Ridge v. Baldwin [1964] AC 40.

<sup>3</sup> K.K Mathew, THREE LECTURES, 1983, p.24.

<sup>4</sup> Max Weber, LAW IN ECONOMY AND SOCIETY, 1969, pp. 287-88.

## **Common law rules in Natural Justice**

The common law rules of natural justice essentially required things:

### **That a decision maker be free from bias**

Considerable care is required to be taken to avoid accusations of bias. Decision-making can, for example, involve direct contact and negotiation with individual landholders. It is important to be aware of the natural tendency to respond to an applicant's demeanor and attitude. Bowing to pressure from an aggressive applicant or going easy on a landholder because they are trying to do the right thing could both be construed as bias by a landholder who did not fit into either category. The applicant's behaviour or past history is an irrelevant consideration. A decision can be dismissed under judicial review if it is found that an officer took this into account. The issue of bias is also dealt with extensively in the department's Code of Conduct.

### **That a decision maker give persons entitled to make submissions, an opportunity to be heard (i.e. the Hearing Rule)**

The right to be heard requires decision makers to inform an applicant and any submitter of all information relevant to the proposed decision. If such material is separate from the application and submissions then allow them a reasonable time to respond to that information before the decision is made while observing statutory time limits. Even though decision makers may be experts in their field, there may be other standards or new technical information that the applicant wants to draw to their attention. If such fresh information is supplied to a decision maker, the decision maker will need to address it in the statement of reasons for the decision. The opportunity to be heard also means that parties may be given the opportunity to be heard on the decision maker's preliminary views about their case. Until the issue is finally decided, any view which is expressed should be merely a preliminary view, with a clear invitation to the parties to respond critically to it, and the decision-maker must be genuinely willing to consider on their merits any responses which might be made. Such a decision maker would be seen as conscientiously grappling with those issues, in a way designed to extract maximum assistance from the parties.

### **Natural justice - the right to procedural fairness**

Procedural fairness is a broad concept that could create different obligations for an applicant and/or a submitter, which will vary according to the circumstances of the case. Essentially, the applicant or submitter must be given a proper opportunity to present their case before a decision is made. This may include allowing them to access information (which is not confidential at law) so as to enable them to prepare their submissions, give sufficient time to prepare and deliver their submissions, etc.

It should be noted that persons denied procedural fairness do not need to show how they would have made use of the opportunity to present their case, or that they would necessarily have succeeded, had they been given the opportunity. If the opportunity is denied, the decision is open to challenge, without further grounds required. Concluding, it may be said that justice should not just be done but it should be seen to be done. If the community is satisfied that justice has been done, they only will continue to place their faith in the courts and the justice system.

## **Application of natural justice in administrative law**

### **General instances**

In the regulation of Trade and Commerce Generally, where a person's right to carry on trade and commerce is restricted, it is necessary that the administration should give a fair hearing and apply natural justice to the affected person's case.<sup>5</sup>

**Licensing-** Licensing is a common administrative technique used to regulate any activity. Cancellation of a license is a quasi-judicial activity because it involves civil as well as pecuniary consequences as the licensee cannot carry on his business without a license. Therefore, official principles of Natural Justice cannot be applied in the process of cancelling a license.<sup>6</sup> However, the refusal to grant a license or suspension of license before actually cancelling it is an administrative function and principles of natural justice should be applied in these cases.<sup>7</sup>

**In the taking over of management of an undertaking-** If the government, after an investigation finds out that the management of a public undertaking is being managed by inefficient persons and in such manner which is detrimental to public interest, the government may take over the management in its hands. However, in this case it has to adhere to the principles of natural justice.

### **Miscellaneous Situations**

**Powers of search and seizure-** The powers of search and seizure are extraordinary powers in the hands of the state for the protection of social security<sup>8</sup> which is of an extreme nature and constitutes a serious invasion of the privacy, reputation, business and freedom of the affected person. Although the power of search may not take into consideration the natural justice, the power of seizure cannot afford to ignore

<sup>5</sup> Swadeshi Cotton Mills v. Union of India, AIR 1981 SC 818 at 832

<sup>6</sup> North Bihar Agency v. State of Bihar, AIR 1981 SC 1758

<sup>7</sup> Krishnagopal Dutta v. Regional Transport Authority, Burdawan, AIR 1970 Cal 104

<sup>8</sup> M P Sharma v, Satish Chandra, District Magistrate Delhi, AIR 1954 SC 300.

natural justice. Similarly, the power of confiscation cannot be exercised without the affected party being given an opportunity of being heard.<sup>9</sup>

**Discretionary powers-** Discretionary powers are subject to control and fair hearing before the decision-making bodies and they may act as a control mechanism on the decision-making powers. However, discretionary action may comprise of dominant element, such as, a major administrative policy, economic or any threat to the community which may negate the idea of fair hearing.<sup>10</sup>

**Supersession of Statutory bodies and Municipal Corporations-** The principle of natural justice must be observed when the government suspends bodies, such as panchayats<sup>11</sup>, or when it appoints an administrator for a registered society in public interest.<sup>12</sup> The government will also allow natural justice when it decides to supercede a municipal corporation.

**Government Contracts-** When the government is under contract with a private party and where the action has statutory basis, the principles of natural justice is applicable.<sup>13</sup>

**Blacklisting-** Under a modern administrative technique, a person is blacklisted for the purpose of disqualifying him for certain purposes and after which he is not eligible to deal with the concerned authority of the area. Blacklisting is an oppressive instrument which is characterised by both legal and constitutional impropriety.<sup>14</sup> However, before a person is blacklisted, he eligible of a fair hearing against the proposed action.<sup>15</sup>

**Right to Property-** A person whose property rights are adversely affected by any administrative action is entitled to natural justice. Before passing orders to demolish a house, the concerned administrative authorities must give the occupant a show cause against such orders.<sup>16</sup> Similarly, in cases of land acquisition by the government for public purposes, the collector, who is responsible for holding an inquiry and then submitting his report to the government, must follow the principles of natural justice.<sup>17</sup>

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<sup>9</sup> Assistant Collector of Customs and Superintendent, Preventive Service Customs, Calcutta v. Charan Das Malhotra, AIR 1972 SC 689.

<sup>10</sup> Sadhu Singh v. Delhi Administration, AIR 1966 SC 91.

<sup>11</sup> T V R V Radhakrishnan Chettiar v. State of Tamil Nadu, AIR 1974 SC 1862

<sup>12</sup> Jathedar Jagdev Singh v. State of Punjab, AIR 1982 P & H 16.

<sup>13</sup> State of Haryana v. Ram Kishan, AIR 1988 SC 1301.

<sup>14</sup> Wade, „CONSTITUTIONAL FUNDAMENTALS“ 980 p.55.

<sup>15</sup> Erusian Equipment and Chemicals Ltd v. State of West Bengal, AIR 1975 SC 266.

<sup>16</sup> Pratap V. Soni v. Gandhidham Development Authority, AIR 1985 Guj 68.

<sup>17</sup> Under the Land Acquisition Act, 1894, s 6.

**Withdrawal of benefits-** When the government withdraws a benefit conferred by it on a person, the person is entitled to a fair and just hearing. The government must also follow natural justice principle when an ex gratia benefit already sanctioned in to be withdrawn.<sup>18</sup>

### Specific Instances

#### Disciplinary Action

**Against students-** Before a student faces disciplinary action, such as expulsion from the institution, or cancelling of his examination results, he is entitled to fair hearing on the principles of natural justice by the authorities concerned.<sup>19</sup> However, in cases where a student is expelled from the educational institution on the grounds of academics, the case is different and he is not entitled to natural justice.<sup>20</sup>

**Against employees of Public Authorities-** For dismissing and terminating the service of an employee who is employed under a public authority, a hearing must be given to the affected person<sup>21</sup>. In specific cases where service conditions of employees are governed by statutory provisions, the natural justice provisions must be read into the statute in the case of termination of the employment. If there are no statutory provisions to govern the service conditions of employees, still natural justice should be observed while taking disciplinary action against them.

**Against Government servants-** A civil servant of the government cannot be dismissed or removed in rank unless an inquiry is held and in which he is informed of the charges against him. He is also entitled to a reasonable opportunity to being heard according to the natural justice provisions. It should also be mentioned that any government action, other than dismissal, removal or reduction in rank, affecting the government employee is also subject to natural justice principles.<sup>22</sup>

**Against Pensioners-** When a civil servant retires from service, he is entitled to receive pension. The government cannot reduce or withhold the pension of the person without giving the pensioner an opportunity to make his defense. Similarly, the gratuity payable to a person upon retirement cannot be reduced without giving the employee a reasonable opportunity to be heard.<sup>23</sup>

#### Miscellaneous situations

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<sup>18</sup> G Ramasubbu Pillai v. Government of India, AIR 1980 Mad 23.

<sup>19</sup> Board of High school and Intermediate Education, Uttar Pradesh Allahabad v. Ghanshayam AIR 1962 SC 1110.

<sup>20</sup> Jawaharlal Nehru University v. B S Narwal, AIR 1980 SC 1666

<sup>21</sup> Jagdish Pandey v. Chancellor, University of Bihar, AIR 1968 SC 353.

<sup>22</sup> Gajanan L. Pernekar v. State of Goa, AIR 1999 SC 3262.

<sup>23</sup> Union of India v. G. Gangayutham, AIR 1997 SC 3387.

There are certain situations where a fair hearing is given to the person concerned either by characterising the functions discharged by them as quasi-judicial or without characterising the functions as quasi-judicial, but holding in each case the principles of natural justice.

They include-

- (a) termination of citizenship of an Indian citizen on the ground that he has acquired the citizenship of another country<sup>24</sup>
- (b) when a cooperative society applies for winding up process
- (c) passing, an order of forfeiture of past service of a government employee for participation in an illegal strike.<sup>25</sup>
- (d) impositions of damages by a commissioner for failure to deposit provident fund by the employer<sup>26</sup>
- (e) withdrawing protection granted to a tenant against eviction under a statute
- (f) deletion of name from the electoral roll.

Natural justice is not only observed in cases where statutory power is being exercised, but also in cases which involves civil consequences to a person.

### **Instances of non application of natural justice in administrative law**

#### **Grounds for Exclusion**

**Legislative Action-** An important ground for excluding the natural justice provisions in a case is, if the administrative action in question is legislative and not administrative in character. Natural justice is not applicable to legislative action except in cases where the relevant statute itself lays provision for some kind of hearing.<sup>27</sup>

However, there have been cases where the Supreme Court has adopted a liberal approach in matters of procedural safeguards to individuals even though the function in question maybe characterized by legislative character.<sup>28</sup>

<sup>24</sup> Mohd Ayub Khan v. Comr of Police, Madras, AIR 1965 SC 1623

<sup>25</sup> Shiv Shankar v. Union of India, AIR 1985 SC 514

<sup>26</sup> Organo Chemical Industries v. Union of India, AIR 1979 SC 1803.

<sup>27</sup> Union of India v. Cynamide India Ltd, AIR 1987 SC 1802.

<sup>28</sup> The function of the government to notify an area as a slum area is quasi-judicial because it affects the property rights of a person; although it could also be regarded as legislative because of its general nature. Scheduled Castes and Weaker section Welfare Association(Regd) v. State of Karnataka, AIR 1991 SC 1118.

**Statutory exclusion of natural justice-** A statute may expressly exclude natural justice. However, there should be strong implication to exclude fair hearing.<sup>29</sup> Whether natural justice is excluded depends much on the basic scheme of statutory provisions conferring the power, nature of power, purpose for which it is conferred and the effects of the exercise of that power.

**Prompt Action-** Hearing may be excluded where prompt action is required to be taken in the interest of public safety, health or moral grounds. E.g. In cases of pulling down of a house to extinguish the fire, mass destruction of poultry in case of bird flu.etc. However, it should be noted that even in emergency cases, the right to hearing should not exclude minimal natural justice, at least in a rudimentary manner to the concerned party.

### **Conclusion**

The researcher would like to conclude this paper undertaken by him by articulating that jurisprudence, in its finer functional role, fulfils itself by compelling administrative law to accept natural justice as its civilized component. Some jurists and many lawyers, belonging to the conservative school, thought that natural justice in its ever-expanding application was the invention of avant-garde jurisprudents. This is wrong since the origin of natural justice dates back to time immemorial when God commanded Adam, but gave him a fair hearing before taking punitive action on him.

The soul of natural justice is fair play in action. To avoid the travesty of injustice, natural justice has occupied the field effectively after *Ridge v. Baldwin* in Britain and through a series of progressive rulings; India has acclimatized natural justice as a pervasive principle beyond defiance by the executive or other State edicts.

The researcher, in order to highlight the importance of natural justice in administrative law function has brought out the cases where it should be completely applicable and thereafter would result in providing welfare to the party concerned and further protection of the concerned party from the rigidity of the common law principles. On the other side, the researcher has also tried to enlighten those cases which do not necessarily demand the application of natural justice and where the administrative law would not be considered biased if it violated the principles of natural justice.

Thus, concluding, the aim of the research, i.e. to enlarge upon the principles of natural justice in accordance with its functioning in relation to administrative law, has been achieved in the researcher's view.

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<sup>29</sup> It is not permissible to interpret any statutory instrument so as to exclude natural justice unless the language expressly mentions so and the court is left with no other option. *Mohinder Singh Gill v. Chief Election Comr, New Delhi*, AIR 1978 SC 851.

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